

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
Implementation of Sections 3(n) and 332)
of the Communications Act)
Regulatory Treatment of Mobile Services)

DOCKET FILE COPY ORIGINAL

GN Docket No. 93-252

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JUL 11 1994

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS

Rod Stalvey d/b/a Stalvey Communications, by his attorneys, hereby submits reply comments in the above captioned rule making. Specifically, Stalvey opposes the comments filed by Nextel Communications, Inc. (Nextel) in the instant rule making and respectfully requests that the Commission reject such proposals as are contained therein.

Stalvey can discern no basis in fact, law or equity which might support Nextel's proposals. It is apparent that Nextel is seeking such additional advantages which Nextel might gather to itself to continue its path toward monopoly of the SMR marketplace. Since this is the obvious intent of Nextel's actions, the Commission should stand firm against such attempts and protect the SMR industry from further anticompetitive challenges.

Stalvey further notes that Nextel's proposals will do nothing for the SMR operators and their end users who will be adversely affected by adoption of Nextel's

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proposals. The Commission may easily determine to its own satisfaction that existing, legitimate analog SMR operators are the intended payers of the costs necessary to be borne to finance Nextel's proffered venture. This is not to say that the public will be alone in bearing this proposed responsibility. The Commission will also be made to bear the enormous cost of providing the necessary resources to relicense hundreds of SMR facilities.

To assist the Commission further in its review of this matter, Stalvey respectfully suggests that Nextel's comments amount to no more than an untimely filed petition for reconsideration of Fleet Call, Inc.'s grant of waiver, which occurred more than three years ago. Certainly the context of a rule making proceeding is an inappropriate opportunity for the lofting of such a stale request. Accordingly, Stalvey recommends this treatment of Nextel's comments and the appropriate application of the Commission's Rules, i.e. summary dismissal of an untimely filed petition, unaccompanied by any request for acceptance of late filed materials.

Finally, the Commission is well positioned to hold Nextel to the promises which its predecessor, Fleet Call, Inc., made to the Commission while seeking its original waiver authority. Nextel then stated that the introduction of its services to the market would not require any spectrum reallocation, and the Commission determined in its order granting said waiver that no reallocation was necessary or

desirable. Stalvey does not believe that any action or circumstance has occurred which would serve as a basis for changing the Commission's position at this time.

Nor has Nextel provided any legal basis for any change in the Commission's determination that the introduction of ESMR services will not require spectrum reallocation. Nextel's reliance on recent actions of Congress and changes in the Communications Act of 1934, as amended, are specious and without merit. A strict and careful reading of the language contained therein creates no obligation in the Commission to make the modifications in its rules requested by Nextel.

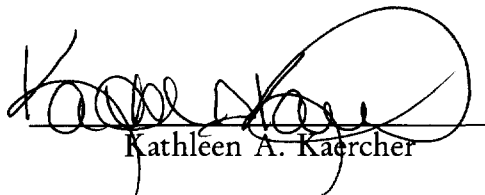
Conclusion

Accordingly, the Commission should summarily reject Nextel's proposals and comments for the reasons stated herein and continue to support the vitality and services provided by hundreds of analog SMR operations, which may someday be converted to digital operations, following introduction of a cost-effective technology

which does not demand undue accommodation from its legitimate, existing neighbors.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Nakia M. Marks, hereby certify that on this 11th day of July, 1994, I caused a copy of the attached Reply Comments to be served by hand delivery or first-class mail, postage prepaid to the following:

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